

REMARKS

Claims 1-25 and 33-38 are all the claims pending in the Application, claims 26-32 having been canceled in a previous amendment.

Claims 1-25 and 33-38 have been rejected as being based upon a defective reissue declaration. The Examiner indicated that a reissue declaration in compliance with 37 CFR 1.175(b)(1) is required before the present reissue application can be allowed.

In response, Applicant includes herewith a Reissue Declaration identifying both joint inventors, Mr. Herman Bustamante and Mr. Horen Chen. This Declaration identifies all of the claim amendments presented during the prosecution of this application. Specifically, the Declaration refers to the claim amendments submitted on 10 April 2002, 16 January 2003, 20 June 2003, and 4 March 2004.

Applicant notes that Mr. Chen has refused to sign the Declaration. See the enclosed Petition under 37 CFR § 1.183 and supporting Statement for the specific facts concerning Mr. Chen's refusal to sign.

In view of the Petition and supporting Statement, Applicant respectfully requests that the enclosed Declaration, signed by Mr. Bustamante, be accepted as though it was signed by both inventors as required by 37 CFR § 1.175(b)(1), taken in conjunction with 37 CFR § 1.172. This request is believed proper in light of the 24 February 2005 telephone conversation between the undersigned and USPTO legal advisor Mr. Kenn Schor, as well as the holding in the unpublished case of *In re Hayes*, 53 USPQ2d 1222 (BPA&I 1999). Accordingly, Applicant seeks the withdrawal of the rejection under § 1.175(b)(1), and requests reconsideration and allowance of the pending claims of the present reissue application.

CONCLUSION

Applicant believes that the Examiner's rejections have been overcome and submits that the subject application is in condition for allowance. Should any issues remain unresolved, the Examiner is invited to telephone the undersigned attorney.

The Commissioner is hereby authorized to charge any fees that arise in connection with this filing which are not covered by the money enclosed, or credit any overpayment, to Deposit Account No. 02-0460.

Respectfully submitted,

HERMAN BUSTAMANTE et al.



Dated: April 19, 2005

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REISSUE APPLICATION DECLARATION BY THE INVENTOR

Docket Number (Optional)

2796-2

I hereby declare that:

Each inventor's residence, mailing address and citizenship are stated below next to their name.

I believe the inventors named below to be the original and first inventor(s) of the subject matter which is described and claimed in patent number 5,809,431, granted 15 September 1998 and for which a reissue patent is sought on the invention entitled _____

Local Multipoint Distribution System

the specification of which

☐ is attached hereto.

☒ was filed on 14 September 2000 as reissue application number 09/662,741

and was amended on 10 April 2002, 16 Jan 2003, 20 June 2003, and 4 March 2004.
(If applicable)

I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

☐ I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b). Attached is form PTO/SB/02B (or equivalent) listing the foreign applications.

I verily believe the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply.)

☐ by reason of a defective specification or drawing.

☒ by reason of the patentee claiming more or less than he had the right to claim in the patent.

☐ by reason of other errors.

At least one error upon which reissue is based is described below. If the reissue is a broadening reissue, such must be stated with an explanation as to the nature of the broadening:

See additional sheet

[Page 1 of 2]

This collection of information is required by 37 CFR 1.175. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

(REISSUE APPLICATION DECLARATION BY THE INVENTOR, page 2)		Docket Number (Optional) 2796-2	
All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant.			
Note: To appoint a power of attorney, use form PTO/SB/81.			
Correspondence Address: Direct all communications about the application to:			
<input checked="" type="checkbox"/> The address associated with Customer Number:		00616	
OR			
<input type="checkbox"/> Firm or Individual Name			
Address			
City	State	Zip	
Country			
Telephone	Fax		
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.			
Full name of sole or first inventor (given name, family name) Herman Bustamante			
Inventor's signature <i>Herman O Bustamante</i>	Date <i>4/01/05</i>		
Residence Alamo, California	Citizenship U. S.		
Mailing Address 164 S. Jackson Way Alamo, California 94507			
Full name of second joint inventor (given name, family name) Horen Chen			
Inventor's signature	Date		
Residence Saratoga, California	Citizenship U. S.		
Mailing Address 19567 Chardonnay Court, Saratoga, California 95070			
Full name of third joint inventor (given name, family name)			
Inventor's signature	Date		
Residence	Citizenship		
Mailing Address			
<input type="checkbox"/> Additional joint inventors or legal representative(s) are named on separately numbered sheets forms PTO/SB/02A or 02LR attached hereto.			



ADDITIONAL SHEET

PTO/SB/52

- (i) Claims 1 to 5 do not claim an invention specifically focused to a single cellular communication system as provided in the specification of the '431 patent;
- (ii) Claims 1 to 5 do not claim an invention relating to a method of initiating radio frequency transmissions between a base station and a subscriber station for a cellular communication system, as provided in the specification of the '431 patent;
- (iii) Claims 1 to 5 do not claim an invention relating to a communication signal configuration arrangement for a cellular communication system as provided in the specification of the '431 patent; and
- (iv) Claims 1 to 5 do not claim an invention relating to a subscriber station in a cellular communication system as provided in the specification of the '431 patent.